IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1115 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

WANKARNER EDUCATION SOCIETY

Versus

STATE OF GUJARAT

Appearance:

MR HARIN P RAVAL for MR PM RAVAL for Petitioner

MR AD OZA G.P. with Mr.MA BUKHARI AGP for Respondent No.1.

MR RM DESAI for Respondent Nos. 2 and 3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 28/04/2000

ORAL JUDGEMENT

1. In this petition filed under Article 226 of the Constitution petitioner has challenged (i) the circular dated February 8, 1983 issued by the Director of Higher Education, Gujarat State, Gandhinagar, Annexure 'A' to the petition and (ii) the consequential order dated July 7, 1987 passed by the Joint Director of Education, Gujarat State, Gandhinagar, Annexure 'B' to the petition.

2. The petitioner is a Society registered under the Societies Registration Act having an object to promote

education amongst all sections of people irrespective of caste, creed, clan or sex and is running Shree Amarsinhji High School at Wankaner (hereinafter referred to as 'the High School' for short) with a campus and playground. The said High School run by the petitioner Trust is admissible to Grant-in-Aid Code ('the Code' for short hereinafter).

3. Government of Gujarat, through the Director of Higher Education had issued circular dated February 8, 1983, inter alia, contending that it was brought to the notice of the Government that private secondary schools of the State run by private Trusts which are receiving grant, are allowing their school campus and playground of their schools for the purpose of conducting activities organised by the Rashtriya Swayamsevak Sangh ('RSS' for short hereinafter), Jamiyate Islami and Anand Margi and as a result of the same other communities feel insecurity which is one of the major factors for increasing communal anarchism. On careful consideration, therefore, it is decided and informed the trustees concerned in the management of the private secondary schools that they should not allow or permit the campus or playground of their school for the purpose of conducting any activity of imparting training to use weapons like lathi or danda by RSS, Jamiyate Islami or Anand Margi and if any school permits its campus for such type of activities then the grant payable to it shall be liable to be deducted by the Director of Higher Education in exercise of powers conferred on him under the Code.

4. It is averred by the petitioner that the State Government has no authority to issue such a circular against the members of RSS or against any such organisation which has lawful existence and which has a right to hold and propagate its views on social, economic, religious or even political aspects and hence the impugned circular dated February 8, 1983 at Annexure A to the petition is violative of Constitutional safeguards guaranteed under Article 19 (1) (a), (b) and (c) of the Constitution and hence liable to be set aside.

5. In the High School run by the petitioner society, students from various communities take their education. The petitioner society is not wedded to any political party or to any particular ideology. Whenever request is made to the petitioner society requisitioning the campus of the school, the petitioner society which is an ideal democratic society, permits the use of its premises to the holders of such views and the members of such peaceful assembly and gatherings, without arms, for the

purpose of their deliberations and discussions of their opinions and propagating their views. However, the petitioner society, as such, is not associated with any such society.

6. Notwithstanding the above facts, respondent No.2, Joint Director of Education, Gujarat State, passed an order dated July 7, 1987, by which it was, inter alia, informed the petitioner Trust that in view of the information/report dated June 8, 1987 addressed by District Education Officer, Rajkot on the question asked by M.L.A. Popatlal Sorathia that in the compound of the petitioner school activities of RSS were proceeded and, therefore, it has committed breach of the Circular dated February 8, 1983, and, therefore, 50% of the grant payable to the High School for the academic year 1987-88 is deducted. According to the petitioner, the said order of deduction of grant is also violative of the principles of natural justice as no opportunity of hearing was given to the petitioner Trust. According to the petitioner, the Trust has not committed breach of Rule 95 of the Code.

7. After the aforesaid order was passed, the petitioner had made representation to the Government on October 19, 1987 against the deduction of 50% grant but the Government has not paid any heed to it. The petitioner, therefore, filed this writ petition and prayed to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriated writ, order or direction to quash and set aside the Circular dated February 8, 1983, Annexure A to the petition and the consequential impugned order dated July 7, 1987, Annexure B to the petition.

8. Though no reply affidavit is filed by the respondents, the petition is contested by them by making their oral submissions.

9. Mr. Harin P. Raval, learned advocate for the petitioner, contended that the State Government has no authority to issue such a direction or circular against the members of RSS or as a matter of fact any such organisation which has lawful existence and which has a right to hold and propagate its views on social, economic and religious or even political aspects. Such circular is, therefore, violative of the Constitutional safeguards guaranteed by Article 19 (1) (a), (b) and (c) of the Constitution. It was stressed that RSS is a non-political organisation and is devoted to social and cultural field only which can be seen from the

Constitution of the RSS. As per the preamble, the aim, object and policy of the RSS it cannot be believed that RSS is engaged in anti-national activity as the RSS people has to adhere to peaceful and legitimate means for realisation of its ideals. The constitution further lays down that in consonance with the cultural heritage, it has abiding faith in the fundamental principle of respect towards all faiths. It also further provides that RSS is aloof from politics and is devoted to social and cultural fields only. What was emphasised was that as per the Constitution, India being a secular State it is not within the competence of the authority to issue such type of circular with a view to curb the activities of other non-political organisation under the guise of or under the fear of communal anarchism. In support of the aforesaid contentions, Mr. Raval placed reliance on the Unreported Judgment of this Court in the case of D.B. Gohel, Clerk, Court of Civil Judge (J.D.)., Talaja v. J.M. Kamodia, District Judge, Bhavnagar and others (Special Civil Application No. 357 of 1968 decided on December 4, 1970, by Division Bench comprising A.D. Desai & S.H. Sheth, JJ. as then then were) and the Unreported judgment of the Supreme Court in the case of The State of Madhya Pradesh v. Ramashankar Raghuvanshi & another (Petition for Special Leave to Appeal (Civil) No. 4679 of 1980 decided on February 21, 1983 by the Bench comprising S. Murtaza Fazal Ali & O. Chinnappa Reddy, JJ. as they then were). In the aforesaid premises, Mr. Raval, learned advocate for the petitioner contended that the circular at Annexure A being violative of Article 19 (1) (a), (b) and (c) of the Constitution is required to be struck down in exercise of powers under Article 226 of the Constitution and he prayed to struck down by quashing and setting it aside.

10. Mr. Oza, learned G.P., contended that the impugned circular was issued by the Government in its wisdom with a laudable object to maintain harmony amongst all the religious classes of the people so that other community may not feel insecurity or terrorised by other community. By the impugned circular the Government has not banned any activity of RSS or Jamiyate Islami or Anand Margi but it has only placed restrictions on the management of the private secondary schools by saying that they should not allow to use the school campus or playground for any activity conducted by such non-political organisation and the Government is within its competence to issue such circular as the schools are getting grant from the Government. The Government has neither included in the said circular those private secondary schools which are not receiving grant nor

informed them about the same. Therefore, the impugned circular is within the competence of the Government and is not in violation of any provision of the Constitution inasmuch as rights guaranteed under Chapter of Fundamental Rights and hence is not required to be struck down and, therefore, he prayed to uphold the validity of the impugned circular.

11. There is no manner of doubt that RSS is a non-political organisation. It has its own constitution and as per the said constitution there is a preamble and aim, object and definite policy. It is equally true that the Government has not put any ban on the activities of the RSS. Therefore, RSS is free to carry out activities envisaged as mentioned in its constitution. It should not be forgotten that by the impugned circular the Government has not put any ban on the activities of the RSS. If that would have been so the grievance voiced by the petitioner would have carried a little weight. On having look at the circular it has imposed restriction on the management of the private secondary school run in Gujarat State and who are eligible to get grant as per the provisions contained in the Code, directing them not to part with the possession of their campus or playground for the purpose of conducting any activity not only of RSS but of Jamiyate Islami as well as Anand Margi. The reason mentioned in the said circular is also very convincing that because of such type of activities carried by non-political organisations people of other community feels insecurity and that is one of the reasons for increasing communal anarchism and, therefore, Government in its wisdom and with a laudable object informed the management of the private secondary schools that they should not allow or permit their campus or playground for conducting any activity carried by such non-political organisations, including imparting training with or without arms like lathi or danda. Therefore, in my view, the said circular does not impose any restriction on the activities of RSS but imposes restrictions on the management of the private secondary schools not to part with their playground or campus for the purpose of carrying out such activities and the Government is within its competence to issue such type of circular to the management of private secondary schools which are eligible for the grant as per the rules and regulations of the Code.

12. So far as the judgments referred to and relied upon by Mr. Raval, learned advocate for the petitioner are concerned, he has supplied for the perusal of this Court a book named High Courts on R.S.S. which is an

unauthentic publication. However, I have perused both the judgments. So far as the judgment of this Court in the case of D.B. Gohel (supra) is concerned, there the question was that a junior clerk employed by the District Judge was removed from service as he was participating in the activities of RSS and imparting physical training to about 10 High School students. In the said case this Court has observed that within the meaning of Rule 30 of the Bombay Civil Services (Conduct, Discipline and Appeal) Rules, RSS is not a political movement and, therefore, the order passed removing the petitioner from service was quashed and set aside by a writ of certiorari.

13. Similar was the case before the Apex Court in the case of the State of Madhya Pradesh (supra). In that case also the employee concerned was removed from the service as he was not found fit person to be entertained in Government service as he had taken part in RSS and Jan Sangh activities. The said order was challenged in the High Court of Madhya Pradesh and the High Court of Madhya Pradesh accepted the petition and set aside the order of removal on the ground that provisions of Article 311 of the Constitution have not been complied with. Against that order the State of Madhya Pradesh has preferred petition for Special Leave to Appeal (Civil) and the said petition was summarily dismissed by the Supreme Court.

14. In both the above referred judgments, the question was of termination of service of the employee concerned on the ground that he had participated in the activities of RSS and in both the cases the High Court as well as the Supreme Court found that the activities of RSS are non-political. Therefore, merely taking part by the employee concerned in the said activities is no ground for removing him from the service. On facts, both these judgments are distinguishable and, therefore, they are of no avail or assistance to the case of the present petitioner.

15. As I have observed in earlier paragraphs of this judgment, the impugned circular does not obstruct or prohibit any activity of RSS but it restricts management of the private secondary schools which are availing grant from the Government under the provisions of the Code not to part with their school campus or playground for conducting the activities of such organisations. There is no manner of doubt that the institutions which are eligible to the grant and which are accepting the grant from the Government under the Code, are bound to follow the instructions issued by the Government or by the

concerned department from time to time which are not inconsistent with the provisions of the Code. In the instant case, the Government has issued specific instructions to those private secondary schools management which are accepting grant from the Government to follow the circular dated February 8, 1983, Annexure A to the petition, which in terms indicate that they should not permit their school campus or playground for conducting or carrying out activities by RSS, Jamiyate Islami or Anand Margi. By no stretch of imagination it can be concluded that the said circular imposes restriction on activities of RSS. It places permissible restrictions on the management of the private secondary schools which are availing grant from the Government under the Code. Therefore, in my view, by issuing the said circular dated February 8, 1983, Annexure A to the petition, the Government has neither violated nor infringed any right of the petitioner envisaged under Article 19 (1) (a), (b) or (c) of the Constitution.

16. In view of the above, the impugned circular dated February 8, 1983 neither violates nor infringes any fundamental rights enshrined under Article 19 (1) (a), (b) or (c) of the Constitution as it does not impose any restriction on the activities of RSS and, therefore, challenge to the said circular must fail and accordingly it fails.

17. Having held that the challenge to the impugned circular dated February 8, 1983 fails, the next question which falls for consideration of this Court is the validity of the order dated July 7, 1987 passed by the Joint Director of Education, Gujarat State, by which 50% of the grant of the petitioner's school for the year 1987-88 has been deducted. Mr. Raval, learned advocate for the petitioner, contended that the said order is passed without issuance of any notice and without providing an opportunity of rendering a reasonable explanation in the matter and it is, therefore, violative of the principles of natural justice i.e., audi alteram partem, as before passing the order for effecting deduction of 50% of the grant, reasonable opportunity of hearing was not afforded to the petitioner Trust or to the High School run by the petitioner which is directly affected. It was emphatically submitted that the order has civil and evil consequences upon the petitioner Trust and the entitlement of receipt of grant by the High School concerned and, therefore, such an order could not have been passed in violation of the principles of natural justice and without affording an opportunity of hearing and hence the same is arbitrary, unjust,

unreasonable and without any basis. Therefore, he prayed that the said order may be quashed and set aside.

18. Mr. Oza, learned G.P., contended that the Joint Director of Education while exercising powers under Rule 95 of the Code is not a judicial or quasi-judicial authority and, therefore, any order passed by him is not subject to the challenge on the ground of violation of principles of natural justice or principles of audi alteram partem is not adhered to. Since it is an admitted fact that the petitioner's school has committed breach of the circular dated February 8, 1983 and in breach thereof it had allowed the RSS to use the campus or playground of the school for conducting their activities it was within the competence of the Joint Director of Education to pass such an order in exercise of powers conferred on him under Rule 95 of the Code and, therefore, the said order cannot be disturbed leniently and lightly. Hence he prayed to dismiss the petition.

19. In order to decide the validity of the impugned order dated July 7, 1987 it would be appropriate to examine the relevant Rule 95 of the Code. Rule 95 of the Code reads thus:

> "95. Grants may be reduced by the Director after due warning given to the management if he is satisfied that the provisions of the Rules laid down in this Code are not duly maintained and that the school has deteriorated in general efficiency. In case, however, of a breach of an instruction or order issued by the Department of an infringement of the provisions of a rule or rules in the Code, as well as in case of gross mismanagement and deterioration in standards of efficiency and discipline, the grant may be reduced or withdrawn without any previous warning."

20. A bare reading of the aforesaid provision indicates that the grant may be reduced by the Director of Higher Education after due warning given to the management if he is satisfied that the provisions of the rules laid down in the Code are not maintained and that the school has deteriorated its general efficiency. However, in case of a breach of an instruction or order issued by the department of an infringement of the provisions of the rule or rules in the Code as well as in case of gross mismanagement and deterioration in standards of efficiency and discipline, the grant many be reduced or withdrawn without any previous warning.

21. There is no manner of doubt that the petitioner's grant has been reduced as it has committed breach of the instructions contained in the circular dated February 8, 1983 issued by the Government. The question is whether before passing the order under Rule 95 of the Code previous notice and hearing thereof should be given by the department to the concerned Trust/school.

22. In the backdrop of the aforesaid statutory provisions envisaged in the Code, now let us examine what is the meaning of natural justice.

23. The phrase 'natural justice' is not capable of static and precise definition. However, a duty to act fairly, i.e., in consonance with the fundamental principles of substantive justice, is generally implied, irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. The object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair-play in action. Natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions of proceedings, be given adequate notice of what is proposed so that they may be in a position, (a) to make representation on their own behalf; (b) or to appear at a hearing or inquiry (if one is held); and (c) to prepare their own case effectively and answer the case (if any) they have to meet. All actions against affected parties which involve penal or adverse consequences must be in accordance with the principles of natural justice. The rules of natural justice do not supplant law, but supplement it. If a statutory provision either specifically or by inevitable implication excludes the application of the rules of natural justice, then the Court cannot ignore the mandate of the legislature. Whether or not the application of the principles of natural justice in a given case has been excluded, wholly or in part, in the exercise of statutory power, depends upon the language and basic scheme of the provision conferring the power, the nature of the power, the purpose for which it is conferred and the effect of the exercise of that power. As is well settled, rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice, viz., (i) audi alteram partem and (ii) nemo judex in re sua. The audi alteram partem rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the alter of administrative convenience or

celerity. It is not permissible to interpret any statutory instrument so as to exclude natural justice, unless the language of the instrument leaves no option to the Court. Procedural fairness embodying natural justice is to be implied whenever action is taken affecting the rights of parties.

24. It is settled law and there is no dispute that principles of natural justice are binding on all the Courts, judicial bodies and quasi-judicial authorities. But the important questions are: Whether these principles are applicable to administrative authorities? Whether those bodies are also bound to observe them? Whether an administrative order passed in violation of these principles is ultra vires on that ground?

25. In State of Orissa v. (Dr.) Binapani, AIR 1967 SC 1269, the Supreme Court has observed that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice.

26. In A.K. Kraipak v. Union of India, AIR 1970 SC 150 the Supreme Court has observed as under:

> "Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially, there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries."

27. In Maneka Gandhi v. Union of India, AIR 1978 SC 597, the Supreme Court has said that the frontier between judicial or quasi-judicial determination on the one hand and an executive on the other has become blurred. The rigid view that principles of natural justice applied only to judicial and quasi-judicial acts and not to administrative acts no longer holds the field.

28. In the case of National Textile Workers' Union v. Ramkrishnan, AIR 1983 SC 75 the Supreme Court was called upon to decide the question as to whether in a petition for winding up of a company, the workmen are entitled to hearing? The Court by a majority of 3:2 decided the point in the affirmative. In the said case Bhagwati, J.

(as he then was) observed:

> "The audi alteram partem rule which mandates that no one shall be condemned unheard is one of the basic principles of natural justice and if this rule is held to be applicable in a quasi-judicial or even in an administrative proceeding involving adverse civil consequences, it would a fortiori apply in a judicial proceeding such as a petition for winding up of a company..... It would indeed be strange that the workers who had contributed to the building of the enterprise as a centre of economic power should have no right to be heard when it is sought to demolish that centre of economic power."(emphasis supplied).

Chinnappa Reddy, J., who delivered concurring judgment, was much more emphatic. His Lordship observed:

> "Can courts say natural justice need not be observed by them as they know how to render justice without observing natural justice? It will surely be a travesty of justice to deny natural justice on the ground that courts know better..... Courts even more than administrators must observe natural justice." (emphasis supplied).

29. It may be appreciated that the expression 'civil consequences' has not been defined anywhere. In the case of Mohinder Singh Gill v. Chief Election Commissioner, AIR 1978 SC 851, Justice Krishna Iyer has discussed the expression 'civil consequences' and has rightly observed as under:

> "What is a civil consequence, let us ask ourselves, by passing verbal booby-traps? 'Civil consequences' undoubtedly cover infraction of not merely property or personal rights but of civil liberties material deprivation and nonpecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequences." (emphasis supplied).

30. In a leading case of Swadeshi Cotton Mills v. Union of India, AIR 1981 SC 818, the Supreme Court has enunciated the principles which are worth quoting. They are as under:

> "During the last two decades, the concept of

> natural justice has made great strides in the realm of administrative law. Before the epoch-making decision of the House of Lords in Ridge v. Baldwin, it was generally thought that the rules of natural justice apply only to judicial or quasi-judicial proceedings; and for that purpose whenever a breach of the rule of natural justice was alleged, courts in England used to ascertain whether the impugned action was taken by the statutory authority or tribunal in the exercise of its administrative or quasi-judicial power. In India also, this was the position before the decision dated February 7, 1967 of this Court in Dr. Binapani Dei case, wherein it was held that even an administrative order or decision in matters involving civil consequences, has to be made consistently with the rules of natural justice. This supposed distinction between quasi-judicial and administrative decisions, which was perceptibly mitigated in Binapani Dei case was further rubbed out to a vanishing point in A.K. Kraipak v. Union of India."

31. Similar question had arisen before a Division Bench this Court also way back in the year 1971 in the case of Hasmukhbhai v. R. Parthasarthy, XII GLR 128, wherein this Court has also held that principles of natural justice must be taken into consideration even if order is administrative. It must be in consonance with rules of natural justice. Giving of opportunity after the order in breach of rules of natural justice is passed cannot cure the original order made in breach of this principle.

32. Similar view was expressed by a Division Bench of this Court in the case of Apexa Co-operative Bank Limited v. District Registrar and others, 1993 (2) GLH 861 has held that even if the Section does not provide for prior notice and hearing before the said interim order is made, the authority must read in the section prior notice and hearing before making the interim order. There is no manner of doubt that in view of catena of decisions the principles of natural justice is applicable in the field of administrative orders as well. Therefore we have to read the maxim of audi alteram partem in the impugned circular dated February 8, 1983.

33. It is an admitted fact that the impugned order dated July 7, 1987 is passed without issuing notice and without affording opportunity of hearing to the

petitioner and hence the principles of natural justice have been violated so far as the petitioner is concerned. The order passed by the Joint Director of Education being contrary to principles of natural justice is void and liable to be set aside.

34. For the foregoing reasons, the challenge to the circular dated February 8, 1983 fails and it is held that the said circular is legal and valid. However, the impugned order dated July 7, 1987 being contrary to the principles of natural justice is liable to be quashed and set aside and accordingly it is quashed and set aside.

35. In the net result, the petition succeeds in part and accordingly it is partly accepted. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

28.4.2000. (A.M.Kapadia, J.)

(karan)